

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

HARLY N.,

Claimant,

vs.

INLAND REGIONAL CENTER,

Service Agency

OAH No. 2011100366

DECISION

Administrative Law Judge Robert Walker, State of California, Office of Administrative Hearings, heard this matter on November 15, 2011, in San Bernardino, California.

Robert Mendes, Consumer Services Representative for Inland Regional Center, represented the regional center.

Nancy N., claimant's stepmother, represented the claimant, Harly N.

The record was closed on November 15, 2011.

SUMMARY

The regional center funds respite services for claimant. The county funds IHSS services for him. Is claimant receiving excessive respite services, i.e., is he receiving more respite hours than the number to which he is entitled?

In this decision, it is determined that claimant is receiving excessive respite services, but the excess is not as great as the regional center contends. The regional center may reduce the number of hours of respite it funds, but not to the extent the regional center has proposed.

FACTUAL FINDINGS

Background

1. Claimant is a 26-year-old consumer of regional center services. He lives at home with his father and stepmother. Claimant has been diagnosed with severe mental retardation, moderate cerebral palsy, epilepsy, microcephalus, and atypical pervasive developmental disorder.

2. Claimant's father and stepmother married when claimant was three years old. The stepmother has been claimant's primary caretaker. She loves him and is very concerned for his wellbeing. Claimant's father is a truck driver. He works 10 hours a day, five days a week. Approximately two times a month, he has an overnight run. Claimant's stepmother does not work outside the home.

3. Claimant requires assistance with every aspect of daily living. Claimant's stepmother testified that claimant functions mentally at the level of a four-year-old. He has a manual wheelchair but cannot maneuver it by himself. He wears braces on his legs and must be lifted in and out of his wheelchair. He requires assistance in taking medication. He has no control of either bladder or bowel; claimant is not toilet-trained; he wears a diaper. He requires constant supervision to prevent him from harming himself. His verbal communications consist of one or two word statements. He occasionally engages in disruptive behaviors that interfere with his participation in social events. He occasionally pinches, pulls hair, and hits. Claimant's father and stepmother do not take him out in public because his behaviors are so unpredictable. For example, he pulls things off of shelves at grocery stores. Caring for claimant has become more difficult as he has grown bigger and stronger.

4. The regional center acknowledges that claimant requires an "intense level of care."

5. Claimant sleeps from approximately 10:00 p.m. to approximately 6:00 a.m. He often awakens once during the night and requires assistance. The regional center funds a day program and transportation for claimant; he attends the day program five days a week. He leaves home for the day program at 8:00 a.m. and returns home at 3:00 p.m.

6. Claimant receives 240.8 hours per month of funding for protective supervision from Riverside County Health and Social Services Department, In-Home Supportive Services (IHSS). Claimant's stepmother provides the protective supervision services and is paid for those services with IHSS funds.

7. Welfare and Institutions Code section 4686.5, subdivision (a)(2),¹ limits the number of respite hours a regional center may provide for a consumer to 90 hours a quarter. The regional center, however, acknowledges that, pursuant to section 4686.5, subdivision (a)(3), claimant qualifies for an exemption from that limitation.

8. Claimant currently receives 128 hours of funding for respite each month. The regional center contends that 128 hours of respite is substantially more than is required in order to relieve claimant's family members from the constantly demanding responsibility of caring for him.

9. By a notice of proposed action dated September 28, 2011, the regional center advised claimant's father and stepmother that it intended to reduce funding for the respite to 70 hours per month. Claimant appealed, and his appeal is the subject of the present proceeding.

10. In the notice of proposed action, the regional center included a calculation that showed that, with the funding 70 hours of respite, claimant's father and stepmother would have to care for him without pay for 42.2 hours a month, which amounts to less than one and one-half hours a day. The regional center's calculation was in error by 8.9 hours per month because the regional center mistakenly understood that claimant received 249.7 hours of IHSS. In fact, he receives 240.8 hours per month.

Risk of out-of-home Placement

11. Claimant's father and stepmother want to maintain him in their home. At times, however, the stepmother thinks about the possibility of institutionalizing him. Claimant's biological mother, who does not have contact with claimant, has suggested that he should be placed in an institution. As noted above, claimant's stepmother loves him, but living with claimant is stressful. Also, claimant engages in behaviors that his stepmother finds repulsive. Claimant's stepmother testified, "There are times when it is very difficult for me."

12. There is a risk of out-of-home placement.

No Obligation to Maintain an Adult Child in One's Home

13. The Lanterman Disabilities and Services Act, beginning at section 4500 of the Welfare and Institutions Code, has little to say about a family's responsibility – or lack of responsibility – to care for a child, and there is nothing about a responsibility to care for an adult child.

¹ All references to the Code are to the Welfare and Institutions Code unless otherwise specified.

14. Regarding minor children, there are a few provisions concerning a family's responsibility. Code section 4646.4, subdivision (a)(4), requires regional centers, when providing services and supports, to consider "the family's responsibility for providing similar services and supports for a *minor child* without disabilities" (Italics added.) Code section 4685, subdivision (c)(6), provides that, unless a family demonstrates a financial need, a regional center, when purchasing day care, may pay only the cost that exceeds the cost of providing day care services to a child without disabilities. Code section 4685, subdivision (c)(7), provides that, unless a family demonstrates a financial need, a regional center may purchase diapers only for children three years of age or older. Code sections 4782 and 4783 concern the financial responsibility of families for children under 18 years of age.

15. There are a number of references in the Lanterman Act to natural supports, which include family. Section 4512, subdivision (e), for example, provides a definition of natural supports. Section 4646.5, subdivision (a)(4), provides that an individual program plan (IPP) shall include a schedule of services and supports to be provided or obtained and shall identify who is responsible for providing or obtaining them. An IPP may provide that natural supports, which include family members, are responsible for providing or obtaining them. However, there is no provision requiring family members to provide services and supports to a child with developmental disabilities.

16. There simply is no requirement that a parent support his or her adult child.

17. The regional center acknowledges that claimant's father and stepmother are not obligated to maintain claimant in their home or provide care for him.

What is Claimant's Entitlement?

18. One of the purposes of respite services is to relieve family members from the constantly demanding responsibility of caring for a disabled consumer. Respite, however, is not for the caregiver. Funding is provided for the disabled consumer so that his or her caregiver will be able to carry on.

19. As noted above, claimant's stepmother provides the protective supervision services and is paid with the IHSS funds. Claimant's stepmother could find a caregiver to do that, in which case claimant's stepmother would be free to work outside the home. She could work part of the IHSS hours and find a caretaker to work part of them. No matter how she uses the IHSS funds, claimant will need respite services. Claimant's father and stepmother will need time away from claimant when they are not working to engage in leisure activities and attend to errands and such. Claimant's father works 10 hours a day five days a week. He is away from home two nights a month. He has no obligation to provide care for claimant, and it is reasonable to conclude that he has little time to provide care for claimant. If claimant's stepmother became employed elsewhere and used the IHSS funds to hire a caretaker, she would still need time away from claimant when she was not working.

20. This is not a circumstance in which IHSS meets respite needs. Code section 4686.5, subdivision (a)(5), provides that a regional center shall consider IHSS to be a generic resource only when it meets the respite needs identified in a consumer's IPP. Here, the IHSS does not meet claimant's respite needs.

21. Claimant's entitlement, however, is limited by the number of hours in the day when he is awake and needs care. And currently he is getting slightly in excess of what he needs.

22. There are 52 weeks in a year and 12 months in a year. If one divides 52 by 12, one gets the average number of weeks in a month – 4.3. To find the number of hours in an average month, one multiplies 24 hours times seven days times 4.3 weeks. The product is 722.4 hours in an average month. This is the way the regional center began its calculation in its notice of proposed action.

23. Claimant goes to bed at 10:00 p.m. and sleeps till 2:00 a.m. He often needs attention for roughly an hour and sleeps again from 3:00 a.m. to 6:00 a.m. Thus, he sleeps 7 hours a night or 49 hours a week. To find the number of hours he sleeps in an average month, one multiplies 49 hours times 4.3 weeks, which gives 210 hours a month. Claimant's day program and transportation to and from it take 7 hours a day. He attends 5 days a week, so that is 35 hours a week. To find the number of hours that is in an average month, one multiplies 35 hours by 4.3 weeks, which gives 150.5 hours. The IHSS hours are 240.8 per month, and the respite hours are 128 per month.

24. If one adds, sleep of 210, day program of 150.5, IHSS of 240.8, and respite of 128, one gets 729.3.

25. Since there are 722.4 hours in an average month, one must conclude that claimant is receiving 7 hours of respite each month to which he is not entitled. Because it is found that the IHSS hours do not meet claimant's respite needs, he is entitled to the remaining respite hours. He is entitled to those hours so that his father and stepmother will be able to maintain the physical and emotional strength they need to meet claimant's needs.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act. (§ 4500, et seq.) The Lanterman Act mandates that an "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community." (§ 4501.) Regional centers are charged with the responsibility of carrying out the state's responsibilities to the developmentally disabled under the Lanterman Act. (§ 4620, subd. (a).) The Lanterman Act directs regional centers to develop and implement an Individual Program Plan (IPP) for each individual who is eligible for regional center services. (§ 4646.) The IPP states the

consumer's goals and objectives and delineates the services and supports needed by the consumer. (§§ 4646, 4646.5, & 4648.)

2. While regional centers have a duty to provide a wide array of services to implement the goals and objectives of the IPP, they are directed by the Legislature to provide services in a cost-effective manner. (§ 4646, subd. (a).) In addition, regional centers may not fund services that are available through another public agency. This prohibition, contained in section 4648, subdivision (a)(8), provides:

“Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.”

Toward this end, regional centers must “identify and pursue all possible sources of funding for consumers receiving regional center services.” (§ 4659, subd. (a).)

3. Respite is one type of service provided to consumers. It is defined under the section 4690.2, subdivision (a), as follows:

“In-home respite services” means intermittent or regularly scheduled temporary nonmedical care and supervision provided in the client's own home, for a regional center client who resides with a family member. These services are designed to do all of the following:

(1) Assist family members in maintaining the client at home.

(2) Provide appropriate care and supervision to ensure the client's safety in the absence of family members.

(3) Relieve family members from the constantly demanding responsibility of caring for the client.

(4) Attend to the client's basic self-help needs and other activities of daily living including interaction, socialization, and continuation of usual daily routines which would ordinarily be performed by the family members.”

4. Section 4646.4 requires regional centers when purchasing service and supports to ensure that it is utilizing generic services and supports where appropriate. In addition, section 4686.5, added to the Lanterman Act, provides in subdivision (a)(5):

“A Regional Center shall only consider in-home supportive services a generic resource when the approved in-home

supportive services meets the respite need as identified in the consumer's individual program plan (IPP) or individualized family service plan (IFSP)."

5. Code section 685, subdivision (a), provides:

"Consistent with state and federal law, the Legislature finds and declares that children with developmental disabilities most often have greater opportunities for educational and social growth when they live with their families. *The Legislature further finds and declares that the cost of providing necessary services and supports which enable a child with developmental disabilities to live at home is typically equal to or lower than the cost of providing out-of-home placement.* The Legislature places a high priority on providing opportunities for children with developmental disabilities to live with their families, when living at home is the preferred objective in the child's individual program plan." (Italics added.)

6. Regional center contends that claimant's respite hours should be reduced to 70 hours per month. Claimant contends that his respite hours should not be reduced at all. By reason of the matters set forth in Findings 1 through 25, it is determined that claimant's hours should be reduced to 121 hours per month.

ORDER

The appeal is granted in part and denied in part. The regional center shall provide claimant with 121 hours of respite services per month.

DATED: December 1, 2011

ROBERT WALKER
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction within ninety (90) days.